

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

INTERNATIONAL MARKETING, INC.,

Plaintiff,

v.

COUNTERACT BALANCING BEADS, INC.,

Defendant.

C.A. No. 1:CV 00-0697

(Magistrate Smyser)

FILED
HARRISBURG
APR 07 2003
MARY E. D'AMICO
FBI

**RESPONSIVE BRIEF OF DEFENDANT COUNTERACT
BALANCING BEADS, INC. IN OPPOSITION
TO INTERNATIONAL MARKETING, INC.'S
MOTION FOR RECONSIDERATION**

International Marketing, Inc. ("IMI") has filed a motion requesting reconsideration of this Court's Order of January 2, 2003 to the extent that the Court denied IMI's request for attorney's fees incurred during before the Third Circuit Court of Appeals as being untimely. This is Counteract Balancing Beads, Inc.'s ("CBB") responsive brief to the motion of IMI.

A. Relevant Procedural History

On January 2, 2003, the Court entered an Order denying that portion of IMI's Motion for its attorney fees incurred as part of the proceedings before the Third Circuit Court

of Appeals. On January 8, 2003, IMI filed its Motion For Reconsideration, and on February 7, 2003, IMI filed its Memorandum in support of its reconsideration motion.

The parties have been engaged in, and are continuing settlement discussions. Because finalization of the settlement agreement has not been reached as of today, April 7, 2003, CBB submits this Response in opposition to IMI's reconsideration request.

In summary, CBB contends that IMI has not shown any of the grounds necessary to warrant a reconsideration of the Court's decision. Those grounds include (a) an intervening change in the relevant law; (b) to take account of newly discovered evidence; (c) to correct *clear* legal error; or (d) to prevent manifest injustice. 12 Moore's Federal Practice, 3d Ed., § 59.03[5].

B. Argument

Of the four grounds recognized to support a motion for reconsideration, IMI appears to limit its argument to the third ground, or "to correct clear legal error." IMI asserts that Local Appellate Rule 108 has application solely to proceedings before the Third Circuit.

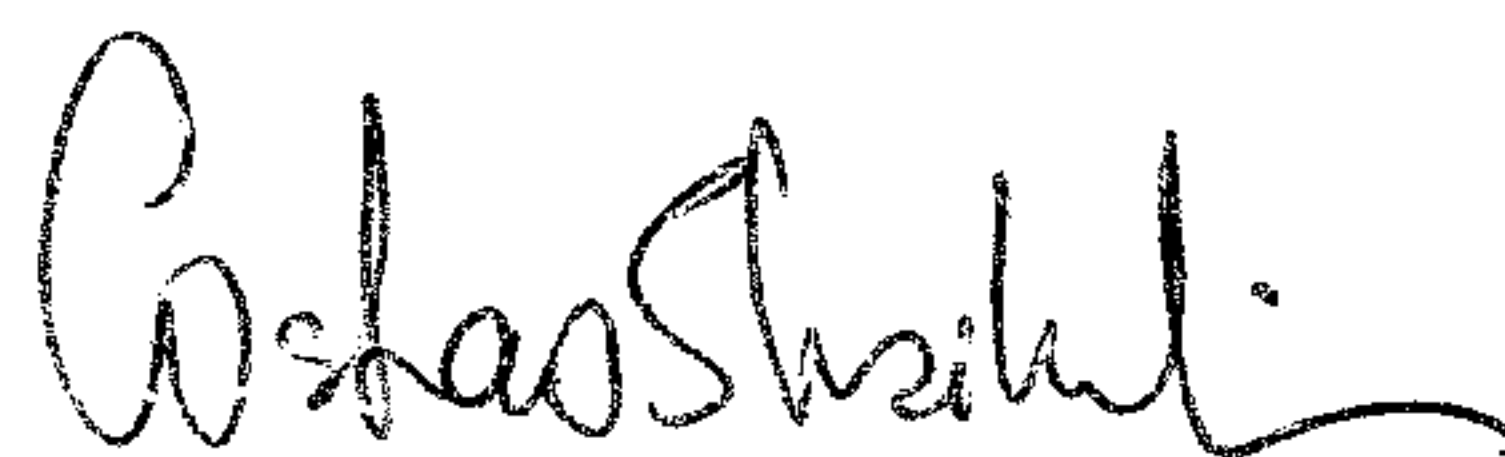
While IMI may disagree with the Court's reasoning and finding that Local Appellate Rule 108 "clearly does set forth a 30 day time limit," IMI has not provided any basis of clear error of law. See *FDIC v. Cage*, 810 F.Supp. 745, 747 (D. Miss. 1993). IMI does not point to any law or rule of this Court which is contrary to the reasoning and analysis in the January 2 Order. In the absence of any argument or evidence of a legal error in the analysis of the Court, IMI's motion for reconsideration should be denied.

Accordingly, CBB respectfully requests that IMI's Motion For Reconsideration be denied. A form of Order is attached for the Court's convenience.

C. Conclusion

For the reasons provided herein as may be supplemented by further briefing, defendant CBB respectfully requests that this Court enter an Order denying the motion of plaintiff IMI for reconsideration.

Respectfully submitted,



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Dated: April 7, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Responsive Brief of Defendant Counteract Balancing Beads, Inc. in Opposition To International Marketing, Inc.'s Motion For Reconsideration* was served upon the noted counsel of record by First-Class Mail, postage prepaid, on April 7, 2003.

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